IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 823 OF 20

Bapu Dinkar Madane. ....
Appellant.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Mrs.Latika Khemani, Adv. (appointed) for the appellant.

Mrs.U.V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

30th Sept., 2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by IV Additional Sessions Judge, Satara, on 29.9.2000 in Sessions Case No.8 of 2000, the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The story of the prosecution stated briefly as evidence from the reappreciation of evidence is that the accused and the victim were man and wife and were staying at Ambheri (Valachi) Satara district. There used to be frequent quarrels between the two. One such quarrel took place on 5.6.1999 at about 5.30 p.m. When the accused Bapu Madane got enraged by the talk of the wife and therefore poured kerosene on her and burnt her. The cause of quarrel usually was the accused doubting the character of the wife. It is pertinent to note that the accused was addicted to alcohol and the fights used to take place on such consumption when doubt regarding chastity of the wife used to be super most to the mind of the accused. The prosecution has examined eight witnesses to prove its case that the accused committed murder of his wife by burning her to death. Accepting this evidence the learned trial Judge convicted the accused as aforesaid which conviction is challenged in this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us by the learned advocate appearing on behalf of the appellant-accused.

4. P.W. 1 – Suman Madane, a neighbour of the victim Tayabai has deposed in Court that on several occasions Tayabai told her of the ill treatment meted out to her by her husband. She met the victim also on 5.6.1999 and then went out to graze her cattle. On return from there she learnt that the victim is burnt. She therefore went to the house of the victim to find her burnt. She accompanied others to Civil Hospital and heard the victim saying that the victim was burnt by the accused by pouring kerosene. This witness is not an eye witness to the incident.

5. P.W. 2 – Mansing Jadhav is police constable who was attached to Aundh police station and received the information regarding the accused putting his wife on fire who was admitted to the hospital. He has recorded the statement of five witnesses and has drawn spot panchnama.

6. P.W. 3 – Sarjerao Sakpal who is Police Head Constable went to the hospital on learning that there was a burning case admitted in the hospital. On reaching the hospital he asked the Medical Officer whether the patient was in a condition to give statement. The Medical Officer then examined the victim and told him that the patient was conscious and was in a condition to speak. The witness then himself got satisfied that the victim was in a condition to speak. He therefore asked her name, address and then proceeded to record her statement. She stated that her husband was addicted to alcohol and used to beat her on suspicion of her character. On the date of incident she told the witness that the husband poured kerosene on her person and set her on fire. He then obtained the thump impression of the the foot of the victim as the hands were burnt and has proved the statement as recorded by him in the Court. Ex.19 is the statement as recorded by P.W. 3. A perusal of the same clearly shows that the victim was conscious, it bears certificate of the doctor and she has in unequivocal terms stated in her statement that she was burnt by her husband.

7. P.W. 4 – Amolkumar Shaha who at the relevant time was appointed as Special Judicial Magistrate, Satara and who was summoned to record the dying

declaration of the victim. Accordingly he went to the hospital inquired the doctor and after being satisfied that the victim was in position to give her statement, recorded the same after requiring the relatives to leave the patient. He speaks of medical certificate issued by the doctor, he speaks of factual condition of the victim and tells in the Court that the victim did say to him that it was accused who set heron fire. He has proved the dying declaration recorded by him. It is Ex.23. It is recorded in question and answer form and there also she has given a detailed description of the manner in which quarrel took place and her husband poured kerosene on her and put her on fire. This statement corroborates on all material particulars. Ex.19 which was recorded by the police also bears the certificate of the doctor, certificate of the Magistrate and it is duly proved by the Magistrate in the Court. There is thus unimpeachable evidence in the shape of two dying declarations duly proved by the persons who wrote them as also the oral testimony of those persons who recorded it saying that they have personally heard the victim saying that it was the accused who put her on fire.

8. P.W. 5 – Haribhau Kuchekar is the constable who took the muddemal to Pune for chemical analysis. P.W. 6 – Anil Shinde is the doctor who was present when the dying declaration was recorded by the police. P.W. 7 – Jayant Deshpande is another doctor who was present when the dying declaration was recorded by the Special Executive Magistrate. These two doctors also depose that they heard the victim saying that she was burnt by her husband, the accused, when her statement was being recorded by the police and the Special Executive Magistrate. P.W. 8 – Chandrakant Madane is the investigating officer.

9. There is thus more than adequate evidence on record in the shape of oral testimony of the two doctors and two persons recording the dying declarations on two different occasions and all the four witnesses corroborate each other on all material particulars and thus lend absolute support to the prosecution story that it was accused who committed murder of the wife. The dying declarations also corroborate the testimony given by these persons. In fact these persons prove by their deposition the dying declarations. In the piece of such evidence the learned trial Judge did the only thing which was right and that is to convict the accused under section 302 of Indian Penal Code. We confirm all the findings recorded by the learned trial Judge and as result thereof we dismiss the appeal.